

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DEANNA VINCENT</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 157,791
<b>COLLINS BUS CORPORATION</b>	)	
Respondent	)	
AND	)	
	)	
<b>ITT HARTFORD ACCIDENT</b>	)	
<b>&amp; INDEMNITY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

**ON** the 4th day of November, 1993, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson, on October 8, 1993, came on before the Appeals Board for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by her attorney, Russell Cranmer, Wichita, Kansas. Respondent and insurance carrier appeared by their attorney, John F. Hayes, Hutchinson, Kansas. There were no other appearances.

**RECORD**

The record is herein adopted by the Appeals Board as specifically set forth in the Award of the Administrative Law Judge.

**STIPULATIONS**

The stipulations are herein adopted by the Appeals Board as specifically set forth in the Award of the Administrative Law Judge.

**ISSUES**

- (1) What is the nature and extent of claimant's disability, if any?
- (2) Is claimant's alleged carpal tunnel syndrome compensable?

**FINDINGS OF FACT**

Having reviewed the entire evidentiary record filed herein, in addition to the stipulations of the parties, the Appeals Board makes the following findings of fact:

(1) The claimant met with personal injury by accident arising out of and in the course of her employment with respondent on January 16, 1990, when she hit her head on a bus chassis. Claimant immediately experienced neck and shoulder pain for which she sought medical treatment.

(2) As a result of this injury, claimant suffered a five percent impairment of function to the body as a whole. The Appeals Board notes cause for doubt about the final opinions of both Dr. Jones and Dr. Stein as they relate to the percentage of permanent impairment. Dr. Stein finds five percent and Dr. Jones finds four percent disability to the body as a whole. Dr. Stein describes himself as speculating regarding the percentage of disability. Dr. Jones, on the other hand, gives confusing and sometimes inconsistent explanations for his conclusions. The Appeals Board agrees here with the percentage of disability awarded by the Administrative Law Judge. To the extent, however, that the Administrative Law Judge is understood to have simply adopted the opinion of Dr. Stein, the Appeals Board's reasons for its conclusion differ.

The Appeals Board is charged with the responsibility of making its own determination as to the nature and extent of disability. See *Tovar v. IBP, Inc.*, 15 Kan. App 2nd 782, 817 P.2d 212 (1991). The Appeals Board is not bound to follow one of the physicians' opinion. The Appeals Board's finding as to the nature and extent of disability is in this case based upon the record as a whole, including the findings upon examination by both physicians as well as the testimony of the claimant regarding her condition. The credible evidence in the record establishes that claimant continues to have a pain in her neck with little, if any, limitation of motion. The evidence indicates that she does not have neurological deficits from her neck injury. Objective tests are negative. Both doctors concluded, however, there was some permanent disability. The Appeals Board therefore finds, based upon the credible evidence presented that claimant suffered a five percent permanent partial impairment to the body as a whole.

(3) The Appeals Board finds that the credible evidence fails to establish that claimant has developed right carpal tunnel syndrome as a result of the January, 1990, accident. Dr. Stein's testimony is persuasive that the carpal tunnel syndrome, if claimant even has it, is not related to the accident at work. Dr. Jones' testimony, read as a whole, indicates the relationship is questionable. According to Dr. Jones, claimant's symptoms of carpal tunnel first surfaced in November, 1990, approximately ten months after the January accident. Dr. Jones' opinion as to the reasons for the delay in the development of the carpal tunnel symptomatology are unpersuasive and based upon conjecture.

(4) The credible evidence fails to establish that claimant has experienced a work disability in excess of the five percent impairment of function rating. The credible evidence also fails to establish work restrictions limitation for the neck. Dr. Stein refused to provide restrictions without claimant first undergoing a work hardening and work evaluation program. Dr. Jones' opinion regarding restrictions and limitations is not adopted as he indicated in his first deposition that he did not know whether the neck pain was caused by injury to the neck or possible carpal tunnel syndrome. No reason was given why Dr. Jones changed his testimony and opinion regarding nature and extent of injury at his second deposition.

(5) The Appeals Board further adopts the findings of Administrative Law Judge George R. Robertson in his Award dated October 8, 1993, to the extent that they are not inconsistent with the findings expressed herein.

#### **CONCLUSIONS OF LAW**

(1) The Workers Compensation Appeals Board on review of an act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge shall have the authority to grant or refuse compensation, or to increase or to diminish the award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. 1993 Session Laws of Kansas, Chapter 286, Section 53(b)(1).

(2) Claimant is entitled to permanent partial general disability benefits based upon the functional impairment rating of five percent.

(3) The Appeals Board adopts the conclusions of law of Administrative Law Judge George R. Robertson in his Award that are not inconsistent with the conclusions expressed herein.

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated October 8, 1993, is affirmed in all respects and award of compensation is hereby entered in favor of the claimant, Deanna Vincent, and against respondent, Collins Bus Corporation, and the insurance carrier, Hartford Accident and Indemnity Company.

The claimant is entitled to 50 weeks temporary total disability at the rate of \$199.93 per week or \$9,996.50, followed by 365 weeks at \$9.99 per week or \$3,646.35, for a five percent permanent partial general bodily disability making a total of \$13,642.85.

As of October 5, 1993, there would be due in owing to the claimant 50 weeks temporary total compensation at \$199.93 per week in the sum of \$9,996.50, plus 144 weeks permanent partial compensation at \$9.99 per week in the sum of \$1,438.56, for a total due and owing of \$11,435.06, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance in the amount of \$2,207.79 shall be paid at \$9.99 per week for 221 weeks or until further order of the Director.

**FURTHER AWARD** is made that claimant is entitled to medical expenses, and any unauthorized medical expenses up to \$350.00.

Future medical will be considered upon proper application.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent and such are directed to pay cost of the transcripts as follows:

**KELLEY, YORK & ASSOCIATES**

Deposition of Dr. Paul Stein, Dated June 3, 1992	\$ 172.60
Deposition of Venda Raye-Johnson, Dated July 7, 1992	\$ 204.05
<b>TOTAL</b>	<b>\$ 376.65</b>

**TRI-STATE REPORTING SERVICES**

Regular Hearing Transcript, Dated January 14, 1993	\$ 211.20
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**SATTERFIELD REPORTING SERVICES**

Deposition of Dr. Jay Stanley Jones, Dated July 6, 1992	\$ 158.10
Deposition of Dr. Jay Stanley Jones, Dated May 27, 1993	\$ 77.00
Deposition of Jerry Hardin, Dated June 22, 1993	\$ 203.00
<b>TOTAL</b>	<b>\$ 438.10</b>

**IT IS SO ORDERED.**

Dated and mailed this \_\_\_\_ day of December, 1993.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

**DISSENT**

I must dissent from the opinion of the majority in this case with respect to the nature and extent of the claimant's disability. The majority's finding of a five percent functional impairment is based upon the testimony of Dr. Paul Stein wherein he "...made an estimate at that time, based predominantly on the patient's complaints, of a five percent impairment rating...". When asked whether the five percent impairment rating was based upon the neck or the hand, Dr. Stein replied, "That's based upon mumbo-jumbo." He goes on to say that he picked a number out of the air and that it has no scientific validity. I cannot base an award upon expert testimony of this sort, despite the lack of a timely objection in the record to this opinion testimony. I, therefore, dissent from the opinion of the majority to the extent that it relies on the opinion testimony of Dr. Stein as to the issue of nature and extent of disability.

Although the only other medical testimony is of a self-contradictory and confusing nature, I find the testimony of Dr. Jay Jones to be the more credible evidence of functional impairment to the neck, which he places at four percent. He specifically relates his impairment rating to the American Medical Association Guides to the Evaluation of Permanent Impairment and states that his opinions as to impairment of function and causation are, within a reasonable degree of medical certainty, more probably true than not true. However, his testimony is inconsistent and less persuasive as to the claimant's alleged injury to the right wrist. I would agree with the majority that the evidence as to the wrist condition is not sufficient to find it to be a work-related condition. The claimant would not be entitled to a work disability in this case despite the restrictions recommended by Dr. Jones due to her failure to cooperate with vocational rehabilitation and her apparent disinterest in that process. I would, therefore, make an award in favor of the claimant based upon a four percent permanent partial disability to the body as a whole.

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BOARD MEMBER

cc: Russell Cranmer, 2831 East Central, Wichita, Kansas 67214  
John F. Hayes, P.O. Box 2977, Hutchinson, Kansas 67504-2977  
George R. Robertson, Administrative Law Judge  
George Gomez, Director